

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

1. Sections Affected

Article 25
R15-5-2501
R15-5-2502
R15-5-2503
R15-5-2504
R15-5-2505
R15-5-2506
R15-5-2507
Article 26
R15-5-2601
R15-5-2602
R15-5-2603
R15-5-2614
R15-5-2616
R15-5-3016
R15-5-3024
R15-5-3032

Rulemaking Action

Repeal
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 42-1005 and 42-5402

Implementing statute: A.R.S. §§ 42-5063, 42-5064, 42-5072, 42-5252 and 42-5401 through 42-5408

3. The effective date of the rules:

February 15, 2000

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 3237, September 17, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 3751, October 15, 1999

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Ernest Powell, Supervisor
Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone Number: (602) 542-4672
Fax Number: (602) 542-4680
E-mail: azdor-tra@inetmail.att.net

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The rules in Articles 25 and 26 provide guidance regarding rental occupancy tax which applies to leases entered into prior to December 1, 1967. The rules in Article 30 provide guidance with various transaction privilege tax issues. The Department is repealing all of the sections listed because they are obsolete, repetitive, or are no longer needed.

7. Reference to any study that the agency relied on in its evaluation of or justification for final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

In accordance with A.R.S. § 41-1055(D)(3), the Department is not required to prepare an economic, small business, and consumer impact statement because the repeal of these rules decreases monitoring, recordkeeping, or reporting burdens on agencies and licensees.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None

11. A summary of the principal comments and the agency response to them:

The Department did not receive any written or verbal comments on the rule action after the publication of the rule-making in the Notice of Proposed Rulemaking.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was the rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 25. ~~RENTAL OCCUPANCY TAX~~ REPEALED

Section

R15-5-2501. ~~Rate~~ Repealed

R15-5-2502. ~~General~~ Repealed

R15-5-2503. ~~Basis for computing tax~~ Repealed

R15-5-2504. ~~Remittance to landlord~~ Repealed

R15-5-2505. ~~Termination of liability~~ Repealed

R15-5-2506. ~~Exemptions~~ Repealed

R15-5-2507. ~~Subleasing of property~~ Repealed

ARTICLE 26. ~~RENTAL OCCUPANCY TAX ADMINISTRATION~~ REPEALED

Section

R15-5-2601. ~~Registration of landlords~~ Repealed

R15-5-2602. ~~Return and payment of tax — general~~ Repealed

R15-5-2603. ~~Return and payment of tax — extension of time~~ Repealed

R15-5-2614. ~~Procedure for appeal — payment of tax after decision of Department becomes final~~ Repealed

R15-5-2616. ~~Procedure for appeal — payment of tax after appeal to State Board~~ Repealed

ARTICLE 30. INTERIM RULES

Section

R15-5-3016. ~~Definition of nonmetalliferous~~ Repealed

R15-5-3024. ~~General~~ Repealed

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R15-5-3032. Non-premise-based telephone service Repealed

ARTICLE 25. RENTAL OCCUPANCY TAX REPEALED

R15-5-2501. Rate Repealed

Effective date of tax rate: 1/1/75

Current combined tax rate: 3%

R15-5-2502. General Repealed

The Rental Occupancy Tax Act imposes a tax on the tenant for the privilege of occupancy of any real property when the right to occupy the property resulted from a written lease entered into prior to 12/1/67 (pre-existing lease).

R15-5-2503. Basis for computing tax Repealed

The amount of the tax is based upon the total value of the rent paid to the landlord.

R15-5-2504. Remittance to landlord Repealed

The tenant is required to remit the tax to the landlord, who is acting as a collecting agent for the state. The tax is to be remitted at the same time payment of the rent is made.

R15-5-2505. Termination of liability Repealed

The tax will apply until such time as the lease either expires, is renewed, renegotiated, or otherwise terminated. When such lease no longer comes under the provision of the Rental Occupancy Tax Act, the landlord becomes subject to the Sales Tax (see R15-5-1610).

R15-5-2506. Exemptions Repealed

- A.** The tax does not apply in cases where the United States Government is either the tenant or the landlord.
- B.** Effective January 1, 1979, the leasing or renting of dwelling units, lodging facilities or trailer or mobile home spaces which are intended primarily as principal or permanent places of residence, as defined in R15-5-1613, is exempt.

R15-5-2507. Subleasing of property Repealed

A tenant who subleases the property (or portion thereof) originally leased from a landlord under a pre-existing lease agreement is still liable for Sales Tax as a lessor when the sublease agreement does not qualify as a pre-existing lease.

ARTICLE 26. RENTAL OCCUPANCY TAX — ADMINISTRATION REPEALED

R15-5-2601. Registration of landlords Repealed

Every landlord leasing property subject to the provisions of this rule is required to register as a collecting agent with the Department on prescribed forms.

R15-5-2602. Return and payment of tax — general Repealed

- A.** The landlord is required to report and pay the tax collected by the last day of the month following the month for which the report is made. (For example: a report covering the month of August would be due September 30.)
- B.** In the event the landlord is unable to collect the tax from the tenant, the landlord is required to notify the Department in writing within the time prior to when the monthly report is due.

R15-5-2603. Return and payment of tax — extension of time Repealed

The taxpayer may petition the Department for an extension of time for filing the report, and the Department, for good cause, may grant the extension. However, the time for filing shall not be extended for more than two months beyond the date the report was required to be filed.

R15-5-2614. Procedure for appeal — payment of tax after decision of Department becomes final Repealed

When 30 days have expired after notice of a decision has been given the taxpayer, and the taxpayer has not taken further action to appeal to the state Board of Tax Appeals, Division Two, the tax must be paid within ten days after the 30-day period has expired.

R15-5-2616. Procedure for appeal — payment of tax after appeal to State Board Repealed

The tax must be paid within 30 days from the time the State Board's decision becomes final unless the State Board rules in favor of the taxpayer.

ARTICLE 30. INTERIM RULES

R15-5-3016. Definition of nonmetalliferous Repealed

For purposes of A.R.S. §§ 42-1313 and 42-1317, "nonmetalliferous" means neither yielding nor containing metal.

R15-5-3024. General Repealed

- A.** Sale of electricity, gas, or water to a consumer, whether an industry, or group, is subject to tax under this classification.

- ~~**B.** Development fees and contributions in aid of construction received for utility and utility services installation pursuant to A.R.S. § 42-1307 are exempt from tax under this classification. A “development fee” is the amount paid by developers to a city for connecting a development to existing water and sewer systems. “Contributions in aid of construction” are revenues received as reimbursement from customers for whom property and equipment was installed to provide utility access.~~

R15-5-3032. ~~Non-premise based telephone service~~ Repealed

- ~~**A.** The amount a provider of exchange access services charges for the services is not subject to the tax levied by A.R.S. § 42-1472 if the services do not involve customer premises.~~
- ~~**B.** “Premises” means real property and any buildings, portions of buildings or appurtenances attached to the real property.~~